

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

STEIN, INC.,)	CASE NOS.
)	09-CA-215131
Respondent,)	09-CA-219834
)	
and)	CASE NO.
)	09-CB-215147
LABORERS' INTERNATIONAL UNION OF)	
NORTH AMERICA (LIUNA) LOCAL NO. 534,)	
)	
Charging Party,)	
)	
and)	
)	
INTERNATIONAL OPERATING ENGINEERS)	
(IUOE) LOCAL 18,)	
)	
Respondent,)	
)	
and)	
)	
LABORERS' INTERNATIONAL UNION OF)	
NORTH AMERICA (LIUNA) LOCAL NO. 534,)	
)	
Charging Party.)	
)	
)	
)	

RESPONDENT STEIN, INC.'S MOTION FOR RECONSIDERATION,
RE-HEARING OR RE-OPENING OF THE RECORD

Keith L. Pryatel, Esq. (#0034532)
KASTNER WESTMAN & WILKINS, LLC
3550 West Market Street, Suite 100
Akron, OH 44333
Phone: 330.867.9998
Fax: 330.867.3786
kpryatel@kwwlaborlaw.com

Attorneys for Respondent,
Stein, Inc.

Ryan K. Hymore, Esq.
Mangano Law Office, LPA
3805 Edwards Road, Suite 550
Cincinnati, OH 45209
Phone: 513.255.5888
rkhymore@bmanganolaw.com

Counsel for Laborers Local No. 534

Timothy R. Fadel, Esq.
18500 Lake Road, Suite 120
Rocky River, OH 44116
tfadel@fadelbeyer.com
Phone: 440.333.2050

Counsel for Operating Engineers Local No. 18

Theresa Laite, Esq.
Daniel Goode, Esq.
Region 9 – NLRB
3003 John Weld Peck Fed. Bldg.
550 Main Street
Cincinnati, OH 45202-3271
513.684.3946 (Fax)
theresa.laite@nrlb.gov
daniel.goode@nrlb.gov

Counsel for Region 9 of the National Labor
Relations Board

February 3, 2020

Respondent, Stein, Inc., pursuant to the NLRB's Case Handling Manual ¶ 10132.4, and 29 C.F.R. § 102.48, respectfully moves for reconsideration, re-hearing and/or re-opening of the record for that portion of the Board's Decision & Order relating to the alleged Section 8(a)(5) termination of Mr. Ken Karoly. Stein, Inc., 369 NLRB No. 10, slip. op. p. 4 (January 28, 2020). In support of, and as grounds for this Motion, Stein, Inc. states:

1. In order to cloak Mr. Karoly with § 8(a)(5) protection under the National Labor Relations Act, the Board identified and cited a reason and rationale that was not a reason and rationale adopted by the Administrative Law Judge; not a reason or rationale plead by Region 9 of the Board in its Second Amended Consolidated Complaint; not a reason or rationale set forth in the unfair labor practice charge filed on behalf of Mr. Karoly; and was the exact opposite of the reason and rationale advocated by Region 9 of the Board at the evidentiary hearing (i.e. Totally Security Management, 364 NLRB No. 106 (2016)). In these circumstances, a motion such as this must be presented to the Board prior to Circuit review. *Ladies' Garment Workers v. Quality Mfg.*, 420 U.S. 276, 2871, n. 3, 95 S.Ct. 972 (1975);

2. In its Decision & Order, the Board stated and held that "...Karoly's probationary period had elapsed by the date he was discharged". This statement is not accurate and is contrary to all of the evidence introduced and offered at the hearing, and in post-hearing briefing. Mr. Karoly testified that he was still in his probationary period when terminated. Region 9 of the NLRB argued in its brief to the Administrative Law Judge that Karoly was in his probationary period when discharged. And Stein's witnesses testified that Karoly was in his probationary period when discharged;

3. The NLRB's new-found basis to overturn Karoly's discharge – that a 90 working day probationary period had been changed by Stein, Inc. into a 90 calendar day probationary period – is not accurate, and is not supported by any evidence in the record. Stein, Inc.'s pre-hearing position statement in response to the charge made it perfectly clear that the initial terms and conditions established by the successor Stein included, inter alia, a 90 working day probationary period. Moreover, Counsel for the

General Counsel argued repeatedly in their post-hearing brief to the Administrative Law Judge that Karoly was still in his 90-day probationary period, which would have placed him in a 90-working day probationary period;

4. The Board's invocation of a theory and rationale not set forth in a charge; not set forth in Region 9's Second Amended Consolidated Complaint; and not briefed or argued by Region 9 at the hearing, or after the hearing, violated Stein's "fair notice" and Due Process rights under the Board's rules, the United States Constitution, and the Administrative Procedures Act.

Attached hereto, and made apart hereof, is Stein's Memorandum of Points and Authorities in Support of Its Motion for Reconsideration, Re-hearing or Re-Opening of the Record.

Respectfully submitted,

s/Keith L. Pryatel

Keith L. Pryatel (#0034532)
KASTNER WESTMAN & WILKINS, LLC
3550 West Market Street, Suite 100
Akron, OH 44333
Phone: 330.867.9998
Fax: 330.867.3786
kpryatel@kwwlaborlaw.com

Attorneys for Respondent,
Stein, Inc.

CERTIFICATE OF SERVICE

This is to certify that the foregoing Respondent Stein, Inc.'s Motion for Reconsideration, Re-Hearing or Re-Opening of the Record has been served, via electronic mail, this 3rd day of February 2020, upon the following:

Theresa Laite, Esq.,
Daniel Goode, Esq.
Region 9 – NLRB
3003 John Weld Peck Fed. Bldg.
550 Main Street
Cincinnati, OH 45202-3271
513.684.3946 (Fax)
theresa.laite@nlr.gov
daniel.goode@nlr.gov

Ryan Hymore, Esq.
Mangano Law Office, LPA
3805 Edwards Road, Suite 550
Cincinnati, OH 45209
rkymore@bmanganolaw.com

Tim Fadel, Esq.
Jonah Gabelsky, Esq.
Fadel & Beyer, LLC
The Bridge Building
18500 Lake Road – Suite 120
Rocky River, OH 44116
tfadel@fadelbeyer.com
jgrabelsky@fadelbeyer.com

s/Keith L. Pryatel